

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition #: 71-026-03-1-5-00011
Petitioner: Margaret Clark
Respondent: Portage Township Assessor; St. Joseph County Assessor¹
Parcel #: 18-2085-3140
Assessment Year: 2003

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. On November 30, 2004, the Petitioner, Margaret Clark,² appealed her property’s assessment to the St. Joseph County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued its determination on July 12, 2005.
2. The Petitioner timely filed a Form 131 petition with the Board. She elected to proceed under the Board’s rules for small claims.
3. On February 26, 2008, the Board held an administrative hearing through its Administrative Law Judge, Jennifer Bippus (“ALJ”).
4. Persons present and sworn in at hearing:
 - a) For the Petitioner: Randall H. Clark, representative of Margaret Clark’s estate
 - b) For the Respondents: David Wesolowski, St. Joseph County Assessor
Rosemary Mandrici, Portage Township Assessor
Ross Portolese, St. Joseph County PTABOA

¹ The St. Joseph County Assessor appeared as an additional party under Ind. Code § 6-1.1-15-4(p) (2006). For ease of reference, the Board has captioned County Assessor as a Respondent.

² A few weeks before the Board’s administrative hearing, Ms. Clark passed away. Her son, Randall Clark, appeared at the hearing and indicated that he represented her estate. On April 15, 2008, the Board’s administrative law judge issued an order directing Mr. Clark to provide some evidence that he was authorized to represent Ms. Clark’s estate. Mr. Clark did not provide that evidence. Given the fact that nobody else has appeared on behalf of Ms. Clark’s estate, however, the Board will proceed on the assumption that Mr. Clark was authorized to represent her estate.

Ralph Wolfe, St. Joseph County PTABOA

5. Frank Agostino, St. Joseph Deputy County Attorney, appeared for the Portage Township Assessor. He was not sworn as a witness. Dennis Dillman, St. Joseph County PTABOA, was also present, but he was not sworn as a witness.

Facts

6. The property is a residential rental property located at 1338 North Adams Street, South Bend, Indiana.
7. Neither the Board nor the ALJ inspected the property.
8. The PTABOA determined the following values for the subject property:
Land: \$800 Improvements: \$37,900 Total: \$38,700.
9. The Petitioner did not request a specific value on her Form 131 petition.

Parties' Contentions

10. The Petitioner offered the following evidence and arguments:
 - a) According to Randall Clark, previous tenants severely damaged the subject house rendering it uninhabitable. *Clark testimony*. Mr. Clark thought the house and garage should have been razed in 2001 when those tenants moved out. *Id.* The Petitioner, however, disagreed because the city of South Bend was going to charge \$10,000 to demolish those structures. *Id.*
 - b) On October 4, 2002, the City of South Bend found a number of code violations. *Id. Pet'r Ex. 3. Id.; Pet'r Exs. 2, 3.* The city's code enforcers told Mr. Clark that the property was only worth \$7500. *Clark testimony*. He then spent \$21,000 to bring it up to code. *Id.* But the house still lacks running water, and Mr. Clark believes that it is worth less than \$10,000.
 - c) In 2005, Mr. Clark was offered \$18,000 for the property. *Clark testimony*. At the time of that offer, much of the cosmetic rehabilitation was finished, but mechanical problems remained. *Id.*
11. The Respondent offered the following evidence and arguments:
 - a) The Respondent contends that the property should be valued using a gross rent multiplier. The Respondent requested income information from the Petitioner, but the Petitioner responded only with code-violation information. *Mandrici testimony; Resp't Ex. 6.*

- b) The property was originally assessed for \$50,700, but the Respondent lowered it to \$38,700 based on the code violations. The PTABOA agreed with the Respondent and notified the Petitioner of the change via its Form 115 determination. *Mandrici, Wesolowski testimony.*

Record

12. The official record for this matter is made up of the following:

- a) The Form 131 petition.
- b) The digital recording of the hearing.
- c) Exhibits:

- Petitioner Exhibit 1: Photos of the subject property
- Petitioner Exhibit 2: City of South Bend Interior Code Violations
- Petitioner Exhibit 3: City of South Bend Exterior Code Violations

- Respondent Exhibit 1: Copy of Form 131
- Respondent Exhibit 2: Copy of Form 130
- Respondent Exhibit 3: Copy of Form 115
- Respondent Exhibit 4: Letter to taxpayer from Twp. Assessor dated June 8, 2005
- Respondent Exhibit 5: Rental property worksheet
- Respondent Exhibit 6: Letter to taxpayer from Twp. Assessor dated June 9, 2005
- Respondent Exhibit 7: Rental property township worksheet
- Respondent Exhibit 8: Finding of Facts (Division of Code Enforcement)
- Respondent Exhibit 9: Dept. of Code Enforcement (Order to Comply)

- Board Exhibit A: Form 131 Petition
- Board Exhibit B: Notice of Hearing
- Board Exhibit C: Notice of Appearance for County Attorney
- Board Exhibit D: Notice of Appearance for County Assessor
- Board Exhibit E: Hearing Sign-In Sheet
- Board Exhibit F: Power of Attorney for Randall Clark
- Board Exhibit G: Order to Provide Evidence of Authority to Represent the
Petitioner's Estate

- d) These Findings and Conclusions.

Analysis

13. The most applicable governing cases are:

- a) A petitioner seeking review of an assessing official's determination must establish a

prima facie case proving both that the current assessment is incorrect, and specifically what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs.*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

- b) In making its case, the taxpayer must explain how each piece of evidence relates to its requested assessment. *See Indianapolis Racquet Club, Inc. v. Wash. Twp. Assessor*, 802 N.E.2d 276 (Ind. Tax Ct. 2004) (“[I]t is the taxpayer’s duty to walk the Indiana Board... through every element of the analysis”).
 - c) Once the petitioner establishes a prima facie case, the burden shifts to the respondent to rebut the petitioner’s evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004); *see also Meridian Towers*, 805 N.E.2d at 479.
14. The Petitioner did not make a prima facie case for reducing the property’s assessment. The Board reaches this conclusion for the following reasons:
- a) Indiana assesses real property based on its “true tax value,” which the 2002 Real Property Assessment Manual defines as “the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property.” 2002 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.3-1-2). The appraisal profession traditionally has used three methods to determine a property’s market value: the cost, sales-comparison and income approaches. *Id.* at 3, 13-15. Indiana assessing officials generally use a mass-appraisal version of the cost approach, as set forth in the Real Property Assessment Guidelines for 2002 – Version A.
 - b) A property’s market value-in-use, as determined using the Guidelines, is presumed to be accurate. *See MANUAL* at 5; *Kooshtard Property VI, LLC v. White River Twp. Assessor*, 836 N.E.2d 501, 505 (Ind. Tax Ct. 2005) *reh’g den. sub nom. P/A Builders & Developers, LLC*, 842 N.E.2d 899 (Ind. Tax 2006). But a taxpayer may rebut that presumption using evidence that is consistent with the Manual’s definition of true tax value. *MANUAL* at 5. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice often will suffice. *Id.*; *Kooshtard Property VI*, 836 N.E.2d at 505, 506 n.1. A taxpayer may also offer sales information for the subject or comparable properties and any other information compiled according to generally accepted appraisal principles. *MANUAL* at 5.
 - c) Regardless of the method used to rebut the assessment’s presumption of accuracy, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For the March 1, 2003, assessment, that valuation date is January 1, 1999. *MANUAL* at 4.

- d) The Petitioner did not offer any probative market-based evidence to rebut the subject property's assessment. At best, Mr. Clark testified that South Bend code enforcers told him that the subject property was worth \$7,500. But Mr. Clark didn't explain how the code enforcers determined that value.
- e) Mr. Clark also testified that he was offered \$18,000 for the property in 2005. But Mr. Clark did not actually sell the property. And he did not explain how that offer related to the property's value as of the January 1, 1999 valuation date.
- f) In sum, the Petitioner showed that her house and garage were significantly deteriorated. That deterioration undoubtedly affected the property's market value-in-use. But the Petitioner did not offer probative market-based evidence to quantify the effect of that deterioration. The Petitioner therefore failed to make a prima facie case for a change in assessment.

Conclusion

15. The Petitioner failed to establish a prima facie case for change in the assessment. The Board finds for the Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now affirms the assessment.

ISSUED: **May 27, 2008**

Commissioner,
Indiana Board of Tax Review

- Appeal Rights -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5, as amended effective July 1, 2007, by P.L. 219-2007, and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. P.L. 219-2007 (SEA 287) is available on the Internet at <http://www.in.gov/legislative/bills/2007/SE/SE0287.1.html>